

INTERNATIONAL
LAW REPORTS

VOLUME 173

Volumes published under the title:

**ANNUAL DIGEST AND REPORTS
 OF PUBLIC INTERNATIONAL LAW CASES**

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| Vol. 15 (1948) | | |
| Vol. 16 (1949) | | |

Volumes published under the title:

INTERNATIONAL LAW REPORTS

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*Lauterpacht Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
173

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CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-41885-0 – International Law Reports
Edited by Christopher Greenwood, Karen Lee
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108418850
DOI: 10.1017/9781108292214

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First published 2018

Printed in the United Kingdom by TJ International Ltd. Padstow Cornwall

A catalogue record for this publication is available from the British Library.

ISBN 978-1-108-41885-0 Hardback

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PREFACE

The present volume contains the 2014 and 2015 orders of the International Court of Justice concerning the request for provisional measures in *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*. It also contains the 2016 arbitral award in *The Duzgit Integrity (Malta v. São Tomé and Príncipe)*, as well as the landmark *Norbert Zongo* case from the African Court on Human and Peoples' Rights (awarding reparations to victims for the first time) and the decision of that Court in *Abubakari*. International jurisprudence is also reflected in decisions from the Court of Justice of the European Union (*Polisario*), the East African Court of Justice (*Katabazi* and *Mohochi*) and the United Nations Human Rights Committee (*Griffiths* and *Husseini*). National jurisprudence is reflected in the Australian appeal decision in *Ure*, the United Kingdom Supreme Court judgment in *R (Yam)* and decisions from the courts of the United States on State immunity (*Terrorist Attacks* and *Harrison*).

The Editors wish to express their gratitude to the many people whose work has made this volume possible. Ms Caroline Kimeu summarized the cases from the African Court on Human and Peoples' Rights, the East African Court of Justice and the Court of Justice of the European Union. Mr Michael Becker prepared the summary of *The Duzgit Integrity Arbitration*. Ms Sukriti Slehria summarized the views of the United Nations Human Rights Committee and Ms Claire O'Connell prepared the summary of *Harrison*. Ms Portia Karegeya summarized *Yam* and Ms Rosalind Elphick wrote the summary of *Terrorist Attacks*. Ms Karen Lee wrote the summary of *Ure* and saw the volume through the press. The Editors are also grateful to Ms Maria Netchaeva, the ILR Editorial Assistant, who prepared the Tables of Cases and Digest, Miss Maureen MacGlashan, CMG, who compiled the Table of Treaties and the Index, Mrs Alison Tickner who checked the copy and Mrs Jenny Macgregor who read the proofs.

The Editors wish to thank Professor Dr Anja Seibert-Fohr and Mr Konstantine Vardzelashvili for selecting the cases from the United Nations Human Rights Committee and supplying the text of the Views for reproduction in these *Reports*. They are also very grateful to the International Court of Justice, the Permanent Court of Arbitration, the African Court on Human and Peoples' Rights, the Court of

Justice of the European Union, the East African Court of Justice, the Federal Court of Australia, and the United Kingdom Supreme Court (whose judgments carry Crown copyright) for kindly permitting these *Reports* to use the electronic files posted on their official websites.

Finally, our thanks go to all the others who have worked to complete this volume, particularly our publishers, Cambridge University Press, and typesetters, SPi, and their staff.

C. J. GREENWOOD

THE PEACE PALACE,
THE HAGUE

K. L. LEE

LAUTERPACHT CENTRE
FOR INTERNATIONAL LAW,
UNIVERSITY OF CAMBRIDGE

May 2017

EDITORIAL NOTE

The *International Law Reports* endeavour to provide within a single series of volumes comprehensive access in English to judicial materials bearing on public international law. On certain topics it is not always easy to draw a clear line between cases which are essentially ones of public international law interest and those which are primarily applications of special domestic rules. For example, in relation to extradition, the *Reports* will include cases which bear on the exception of “political offences” or the rule of double criminality, but will restrict the number of cases dealing with purely procedural aspects of extradition. Similarly, while the general rules relating to the admission and exclusion of aliens, especially of refugees, are of international legal interest, cases on the procedure of admission usually are not. In such borderline areas, and sometimes also where there is a series of domestic decisions all dealing with a single point in essentially the same manner, only one illustrative decision will be printed and references to the remainder will be given in an accompanying note.

DECISIONS OF INTERNATIONAL TRIBUNALS

The *Reports* seek to include so far as possible the available decisions of every international tribunal, e.g. the International Court of Justice, or ad hoc arbitrations between States. There are, however, some jurisdictions to which full coverage cannot be given, either because of the large number of decisions (e.g. the Administrative Tribunal of the United Nations) or because not all the decisions bear on questions of public international law (e.g. the Court of Justice of the European Union). In these instances, those decisions are selected which appear to have the greatest long-term value.

Human rights cases. The number of decisions on questions of international protection of human rights has increased considerably in recent years and it is now impossible for the *Reports* to cover them all. As far as decisions of international jurisdictions are concerned, the *Reports* will continue to publish decisions of the European Court of Human Rights and of the Inter-American Court of Human Rights, as well as “views” of the United Nations Human Rights Committee. Decisions of national courts on the application of conventions on human rights will not be published unless they deal with a major point of substantive human rights law or a matter of wider interest to public

international lawyers such as the relationship of international law and national law, the extent of the right of derogation or the principles of the interpretation of treaties.

International arbitrations. The *Reports* of course include arbitral awards rendered in cases between States which involve an application of public international law. Beyond this, however, the selection of arbitral decisions is more open to debate. As these *Reports* are principally concerned with matters of public international law, they will not include purely private law commercial arbitrations even if they are international in the sense that they arise between parties of different nationality and even if one of them is a State. (For reports of a number of such awards, see *Yearbook Commercial Arbitration* (ed. Albert Jan van den Berg, under the auspices of the International Council for Commercial Arbitration).) But where there is a sufficient point of contact with public international law then the relevant parts of the award will be reported. Examples of such points of contact are cases in which the character of a State as a party has some relevance (e.g. State immunity, stabilization clauses, *force majeure*) or where there is a choice of law problem involving discussion of international law or general principles of law as possible applicable laws. The same criteria will determine the selection of decisions of national courts regarding the enforcement of arbitral awards.

DECISIONS OF NATIONAL TRIBUNALS

A systematic effort is made to collect from all national jurisdictions those judicial decisions which have some bearing on international law.

EDITORIAL TREATMENT OF MATERIALS

The basic policy of the Editors is, so far as possible, to present the material in its original form. It is no part of the editorial function to impose on the decisions printed in these volumes a uniformity of approach or style which they do not possess. Editorial intervention is limited to the introduction of the summary and of the bold-letter rubric at the head of each case. This is followed by the full text of the original decision or of its translation. Normally, the only passages which will be omitted are those which contain either statements of fact having no bearing on the points of international law involved in the case or discussion of matters of domestic law unrelated to the points of international legal interest. The omission of material is usually indicated either by a series of dots or by the insertion of a sentence in square brackets noting the passages which have been left out.

PRESENTATION OF MATERIALS

For reproduction of material in this volume, electronic files have been used wherever possible and their source acknowledged in the Preface. Citations of the reports in which the case may be found are listed in the “Report” section in square brackets at the end of the case; the language of the original decision is also mentioned there. The bold figures in square brackets in the body of the text indicate the pagination of the original report where included.

NOTES

Footnotes. Footnotes enclosed in square brackets are editorial insertions. All other footnotes are part of the original report.

Other notes. References to cases deemed not to be sufficiently substantial to warrant reporting will occasionally be found in editorial notes either at the end of a report of a case on a similar point or under an independent heading.

DIGEST OF CASES

With effect from Volume 75 the decisions contained in the *Reports* are no longer arranged according to the traditional classification scheme. Instead a Digest of Cases is published at the beginning of each volume. The main headings of the Digest are arranged alphabetically. Under each heading brief details are given of those cases reported in that volume which contain points covered by that heading. Each entry in the Digest gives the name of the case concerned and the page reference, the name of the tribunal which gave the decision and an indication of the main points raised in the case which relate to that particular heading of the Digest. Where a case raises points which concern several different areas of international law, entries relating to that case will appear under each of the relevant headings in the Digest. A list of the main headings used in the Digest is set out at p. xvii.

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and a Consolidated Tables of Cases and Treaties for volumes 1-80 were published in two volumes in 1990 and 1991. A further volume containing the Consolidated Index and Consolidated Tables of Cases and Treaties for volumes 81-100 was published in 1996. A Consolidated Index, a Consolidated Tables of Cases and a Consolidated Table of Treaties for volumes 1-125 were published in 2004. A Consolidated Index and a Consolidated Table of Treaties for volumes 1-160 were published in 2017. Volume 170 contains Consolidated Tables of Cases for volumes 126-170.

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Wherever possible, each treaty includes a reference to where an online English-language version of the treaty can be found. For treaties between 1648 and 1919, this is almost always the Consolidated Treaty Series (CTS), under Oxford Historical Treaties on the Oxford Public International Law website. Post-1919, references are most frequently to the League of Nations Treaty Series/United Nations Treaty Series (LNTS/UNTS). Here it should be noted that historically LNTS/UNTS references have taken the form '39 UNTS 55', 39 being the volume number, 55 the page number. With effect from UNTS volume 2301, UNTS no longer includes the volume and page number as part of the reference, using simply the registration number. UNTS references are now in the form UNTS 42146. For ILR purposes, because of its value as an identifier, the registration number is now being added parenthetically to pre-volume 2301 treaties in the form 213 UNTS 221 [UNTS 2889].

Reference is also made to other treaty databases such as the European Treaty Series (ETS), Organization of American States Treaty Series (OASTS) or to Official Journals, particularly where these are the only databases currently hosting a treaty. Where a treaty appears to be available only on the website of the parent international organization, usually without any citation identifier, users are referred to the relevant website. For bilateral treaties, often the only source it has been possible to find is a non-English-language version on one of the parties' official websites, such as the parliamentary proceedings approving the treaty. Users requiring a comprehensive list of written sources should refer to the CTS, or to the Flare Index to Treaties, available at IALS Digital.

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